

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures–Hearings

Article 3. Administrative Hearing Procedures for Petitions for Review of Complaints

Subarticle 5. Prehearing Procedures

§ 60065.29. Motions for Summary Determination of Issues.

(a) Any party may file a motion for summary judgment or summary adjudication of the issues. Such motions shall include supporting legal argument, and where necessary, affidavits showing that there is no genuine issue of material fact for determination regarding the identified issues. A party opposing such a motion shall show by affidavit or other documentation that a genuine issue of material fact as to the issues raised exists. After reviewing the motion and response of the parties, the administrative record, and any arguments of the parties, the hearing officer shall determine whether a genuine issue of material fact as to the issues exists and whether a party is entitled to judgment on the issue(s) as a matter of law.

(b) If, upon considering a motion under subparagraph (c), the hearing officer determines that a party is entitled to summary judgment on the issue(s) as a matter of law, the hearing officer shall issue a written decision or order that sets forth necessary findings of fact and conclusions of law regarding all matters that were at issue. In a complaint proceeding, if the hearing officer decision finds the respondent to be in violation, the hearing officer shall follow the penalty assessment criteria set forth in section 60065.40.

(c) Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the hearing officer may deny the motion or may grant a continuance to permit affidavits to be obtained or to permit such additional discovery as provided under these procedures.

(d) The hearing officer shall deny a request for summary determination of the issue(s) if he or she finds the administrative record, including any evidence presented by the parties as part of this motion, present a genuine issue of material fact. If the hearing officer denies a request for summary determination, or denies such a request in part, the hearing officer shall promptly issue to each party a written ruling as to the existence of a genuine issue of material fact on the issue(s) and the reasons for the ruling. The matter shall continue to be set for hearing on all issues for which a genuine issue of material fact exists.

NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028 and 43031(a), Health and Safety Code.

REFERENCE